

REMARKS

Status of the Claims

Claims 1, 9, 10, 12-14, 19 and 21, as amended, and claims 2-8, 10, 11, and 15-18, as filed, are pending in the application. Claim 20 is cancelled without prejudice or disclaimer. The amendments to the pending claims and the specification are made without prejudice and are fully supported by the specification as filed. No new matter has been added as a result of the above amendments. The rejections set forth in the Office Action have been overcome by amendment or traversed by argument below.

Claims 9, 12-14 and 21 have been amended to overcome objections in the Office Action. Specifically, claim 9 is amended to recite dependence on claim 8 and "the" is inserted in claim 21. Applicants have also amended claims 12-14 to recite that the promoter is a promoter that can be activated by GAL4 protein instead of a GAL4 activatable promoter. Applicants respectfully contend that the term "GAL4 activatable promoter" would be understood by one of ordinary skill in the art and that the amendments do not extend past the disclosure of the specification as filed.

The claim amendments overcome the statutory double patenting rejection

Claims 1, 2, 3, 4, 5, 7, 9, and 10 stand rejected under 35 U.S.C. §101 as being unpatentable over claims 1, 5, 6 and 8-11 of co-owned U.S. Patent 6,878,524. Applicants have amended claim 1 to recite the limitations in claims 6 or 8 or both, and respectfully contend that these amendments overcome the asserted grounds of rejection.

Applicants' terminal disclaimer overcomes the asserted obviousness-type double patenting rejection

Claims 15-18 stand rejected under the judicially-created doctrine of obviousness-type double patenting over co-owned U.S. Patent No. 6,878,524. Applicants submit herewith a terminal disclaimer that overcomes the asserted grounds of rejection.

The claims are not anticipated under the provisions of 35 U.S.C. §102(e)

Claims 1-21 stand rejected under the provisions of 35 U.S.C. 102(e) over the disclosure of co-owned U.S. Patent No. 6,878,524. Applicants submit herewith a declaration under 37 C.F.R. 1.132 that the instantly-claimed invention disclosed but not claimed in the reference was invented by the inventors named in this application. This showing thus overcomes the asserted grounds of rejection.

Conclusion

Applicants respectfully submit that all requirements of patentability are fully met, and allowance of the claims is respectfully requested.

If the Examiner believes it to be helpful, she is invited to contact the undersigned attorney by telephone at 312-913-0001.

Respectfully submitted,

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